



CRS Report for Congress

Iraq: Government Formation and Benchmarks

Kenneth Katzman
Specialist in Middle Eastern Affairs
Foreign Affairs, Defense, and Trade Division

Summary

The current government is the product of a U.S.-supported election process designed to produce a democracy, although many now believe it produced a sectarian government incapable of reconciling Iraq's communities. This sentiment has grown to the point where some believe that the United States should seek a decentralized Iraq with substantial autonomy for each community. However, the Administration says that, partly as a result of the U.S. "troop surge," it is now seeing some concrete signs of political accommodation, most notably at local levels. See CRS Report RL31339, *Iraq: Post-Saddam Governance and Security*, by Kenneth Katzman.

Elections and Constitutional Referendum in 2005

After about one year of formal occupation, the United States handed sovereignty to an appointed Iraqi government on June 28, 2004. A government and a constitution were voted on thereafter, in line with a March 8, 2004, Transitional Administrative Law (TAL). The first election (January 30, 2005) was for a 275-seat transitional National Assembly, provincial assemblies in each of Iraq's 18 provinces (41 seats each; 51 for Baghdad), and a Kurdistan regional assembly (111 seats). The election system was proportional representation (closed list) — voters chose among "political entities" (a party, a coalition of parties, or individuals). A female candidate occupied every third position on electoral lists in order to ensure 25% female membership. A total of 111 entities were on the national ballot, of which nine were multi-party coalitions.

In all 2005 votes, vehicle traffic was banned, Iraq's borders were closed, and polling centers were guarded primarily by Iraq's security forces (ISF), with U.S. forces as backup. Violence did not disrupt voting. As shown in the table at the end of this paper, the January election was dominated by the Shiite Islamist "United Iraqi Alliance" (UIA), consisting mainly of the Supreme Council for the Islamic Revolution in Iraq (SCIRI), which in May 2007 changed its name to the Islamic Supreme Council of Iraq (ISCI), and the Da'wa Party, as well as the Kurds, and a few secular parties. The two main Kurdish parties, the Patriotic Union of Kurdistan (PUK) and the Kurdistan Democratic Party (KDP) offered a joint list. Sunni Arabs (20% of the overall population), perceiving

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electoral defeat, mostly boycotted and won only 17 seats and very few provincial council seats. Sunnis won only one seat on Baghdad province's 51-seat council. The factions formed an interim national government that U.S. officials said was not sufficiently inclusive of Sunnis, although it had Sunnis as Assembly speaker, deputy president, deputy prime minister, defense minister, and five other ministers. The presidency went to PUK leader Jalal Talabani and Da'wa leader Ibrahim al-Jafari became Prime Minister.

Permanent Constitution and Referendum. The elected Assembly was to draft a constitution by August 15, 2005, to be put to a referendum by October 15, 2005, subject to veto by a two-thirds majority of voters in any three provinces. On May 10, 2005, the Assembly appointed a 55-member drafting committee which included only two Sunni Arabs, although 15 Sunnis were later added as full members and 10 more as advisors. In August 2005, the talks produced a draft that set a December 31, 2007, deadline to hold a referendum on whether Kirkuk will join the Kurdish region (Article 140); designated Islam "a main source" of legislation and said no law can contradict the "established" provisions of Islam (Article 2);¹ set a 25% electoral goal for women (Article 47); allowed families to choose which courts to use for family issues such as divorce and inheritance (Article 41); made only primary education mandatory (Article 34); and said that the federal supreme court would include Islamic law experts and civil law judges and experts (Article 89). These provisions concerned many women who fear that too much discretion was given to males of their families, and many women say the provision is being misused by Islamic extremists in southern Iraq and elsewhere to impose, including through killings, restrictions against women.

The major disputes were — and continue to be — centered on the draft's allowing two or more provinces together to form new autonomous "regions" and to allocate oil revenues. Article 117 allowed each "region" to organize internal security forces, which would legitimize the fielding of militias, including the Kurds' *peshmerga* (allowed by the TAL). Article 109 required the central government to distribute oil and gas revenues from "current fields" in proportion to population, and gave "regions" a role in allocating revenues from new energy discoveries. Sunnis opposed the draft on these grounds; Sunni-dominated areas of Iraq have few oil or gas deposits, although some oil fields might lie in Anbar Province. Article 62 established a "Federation Council," a second chamber with its size and powers to be determined by subsequent law (not passed to date).

With contentious provisions unresolved, Sunnis registered in large numbers (70%-85%) to try to defeat it, prompting a U.S.-mediated agreement (October 11) providing for a panel to propose amendments within four months after a post-December 15 election government took office (Article 137). The amendments would require a majority Assembly vote of approval and, within another two months, would be put to a referendum under the same rules as the October 15 referendum. However, in the referendum, the Sunni provinces of Anbar and Salahuddin had a 97% and 82% "no" vote, respectively. Mostly Sunni Nineveh province voted 55% "no," which meant that the constitution was adopted (only two provinces, not three, voted "no" by a two-thirds majority).

December 15, 2005 Elections. In the December 15, 2005, elections for a four year government, a formula was adopted to attract Sunni participation; each province

¹ [<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/12/AR2005101201450.html>].

contributed a predetermined number of seats to a “Council of Representatives” (COR). Of the 275-seat body, 230 seats were allocated this way, with 45 “compensatory” seats for entities that would have won additional seats had the constituency been the whole nation. 361 political “entities” registered, of which 19 were multi-party coalitions. The UIA slate formally included Sadr’s faction as well as other hard line Shiite parties including *Fadilah* (Virtue). The major Sunni slate was a three-party “Iraq Consensus Front” led by the Iraq Islamic Party (IIP), which had entered but then withdrew from the January elections. Another major Sunni faction (National Iraqi Dialogue Front) ran separately. The hardline Muslim Scholars Association (MSA) did not participate, although it did not, as it had in January, call for a Sunni boycott. Violence was minor because Sunni insurgents, supporting greater Sunni inclusion, facilitated voting. Still, voters chose lists representing their sects and regions, and the UIA and the Kurds dominated the new COR, with nearly two-thirds of seats.

The COR was inaugurated on March 16, but quickly began wrangling over posts. Kurdish and other opposition caused the UIA to agree to Jafari’s Da’wa deputy, Nuri Kamal al-Maliki, as Prime Minister. On April 22, the COR approved Talabani to continue as president, and selected his two deputies — ISCI’s Adel Abd al-Mahdi (incumbent) and Consensus Front/IIP leader Tariq al-Hashimi. Another Front figure, the hardline Mahmoud Mashhadani (National Dialogue Council party), was chosen COR speaker. Maliki won COR majority vote approval of a 37-member cabinet (including himself and two deputy prime ministers) on May 20, 2006. Three key slots (Defense, Interior, and National Security) were not filled permanently until June 8 because of infighting. Of the 37 posts, there were 9 Sunnis; 8 Kurds; 19 Shiites; and 1 Christian. Four are women.

Iraqi Performance on Benchmarks

In August 2006, the Administration and the Iraqi government agreed on a series of “benchmarks” that, if adopted and implemented, would presumably achieve political reconciliation. Under Section 1314 of a FY2007 supplemental appropriation (P.L. 110-28), “progress” on eighteen political and security-related benchmarks — as assessed in Administration reports due by July 15 and September 15 — was required for the United States to provide \$1.5 billion in Economic Support Funds (ESF) to Iraq. The president indicated intent to use the waiver provision to provide the aid. The law mandated a separate assessment by the GAO, by September 1, 2007, of the degree to which the benchmarks have been actually achieved, as well as an assessment of the Iraqi security forces (ISF) by an outside commission (headed by ret. Gen James Jones). Results of the assessments, as well as subsequent actions, are shown in the chart below. Many experts agree that there has not been substantial movement toward national political reconciliation, but recent progress on some of the laws and on other issues — such as November 2007 passage of a law to provide pensions to Saddam-era workers and the January 2008 passage of the De-Baathification reform law — are cited by the Administration as concrete signs of growing reconciliation. The COR also fulfilled a related “benchmark” (not part of those named in P.L. 110-28 but cited by the Iraqi themselves, by passing a law (January 22, 2008) adopting a new national flag, although many Iraqi Arabs say the new flag was adopted only because of Kurdish pressure and some factions refuse to fly it over buildings they control.

Some question whether a strong, cohesive central government can ever be established. Although U.S. support for decentralizing Iraq into autonomous regions (expressed in a Senate amendment to H.R. 4986, P.L. 110-181. FY2008 defense authorization act) appears to be increasing, Maliki is now widely assessed as having stabilized politically, helped by a decrease in violence attributed to the U.S. “troop surge.” Deputy President Hashimi continues to promote reconciliation, signing on to an August 26, 2007, “Unity Accord” — along with Maliki, Talabani, deputy President Adel Abd al-Mahdi (ISCI) and Kurdish regional president Masoud Barzani — to try to pass the de-Baathification law, hold early provincial council elections, and release (mostly Sunni) detainees. All blocs, including the Consensus Front, have ended their 2007 boycotts of the COR. Still, the number of vacant cabinet posts is at least 12 out of 37 positions, reflecting the April 2007 withdrawal of the Sadr faction, the Consensus Front, and the Allawi bloc from the cabinet. Maliki filled two vacancies (agriculture and health ministers) in October 2007 with independent Shiites, replacing resigned Sadrists, but failed in November 2007 to win COR confirmation for new ministers of justice or communications. The Iraqi Islamic Party, the main faction of the Consensus Front, reportedly is considering rejoining the cabinet. A relatively positive development came in December 2007 with agreement by the Kurds to delay the contentious, constitutionally mandated referendum on Kirkuk until June 2008; it was to be held by December 31. On the other hand, demonstrating that new alliances are forming across sectarian lines, 120 parliamentarians from Sadr’s faction, Allawi’s faction, and part of the Da’wa Party members signed a statement on January 13, 2008, opposing Kurdish takeover of Kikuk and energy deals signed by the Kurds.

Table 2. Election Results (January and December 2005)

Slate/Party	Seats (Jan. 05)	Seats (Dec. 05)
UIA (Shiite Islamist). Now 84 seats. ISCI- 29; Da’wa (two factions) - 25; independents - 30. Sadr (29 seats) and Fadilah (15 seats) left bloc in 2007.	140	128
Kurdistan Alliance (PUK and KDP).	75	53
Iraqis List (secular, Allawi); added some mostly Sunni parties for Dec. vote (2 members left the bloc in September 2007, leaving it with 23 seats)	40	25
Iraq Consensus Front (Sunni). Main Sunni bloc; not in Jan. vote	—	44
National Iraqi Dialogue Front (Sunni, Saleh al-Mutlak) Not in Jan. vote	—	11
Kurdistan Islamic Group (Islamist Kurd) (votes with Kurdistan Alliance)	2	5
Iraqi National Congress (Chalabi). Was part of UIA list in Jan. 05 vote	—	0
Iraqis Party (Yawar, Sunni); Part of Allawi list in Dec. vote	5	—
Iraqi Turkomen Front (Turkomen, Kirkuk-based, pro-Turkey)	3	1
National Independent and Elites (Jan)/Risalyun (Message, Dec) pro-Sadr	3	2
People’s Union (Communist, non-sectarian); on Allawi list in Dec. vote	2	—
Islamic Action (Shiite Islamist, Karbala)	2	0
National Democratic Alliance (non-sectarian, secular)	1	—
Rafidain National List (Assyrian Christian)	1	1
Liberation and Reconciliation Gathering (Sunni, secular)	1	3
Ummah (Nation) Party. (Secular, Mithal al-Alusi, former INC activist)	0	1
Yazidi list (small Kurdish, heterodox religious minority in northern Iraq)	—	1

Number of polling places: January: 5,200; December: 6,200; Eligible voters: 14 million in January election; 15 million in October referendum and December; Turnout: January: 58% (8.5 million votes)/ October: 66% (10 million)/ December: 75% (12 million).

Table 1. Assessments of the Benchmarks

Benchmark	July 12 Administration Report	GAO Report	Sept. 14 Administration Report	Subsequent Actions
1. Forming Constitutional Review Committee and completing review	satisfactory	unmet	satisfactory	no progress
2. Enacting and implementing laws on De-Baathification	unsatisfactory	unmet	satisfactory	“Justice and Accountability Law” passed Jan. 12 unanimously by 143 in COR present. Effect on overall reconciliation depends on implementation. Allows about 30,000 lower ranking ex-Baathists to regain their jobs; 3,500 Baathists (top three party ranks) would not, but would receive pensions instead. But, the law could allow for judicial prosecution of all ex-Baathists and to firing of about 7,000 ex-Baathists in post-Saddam security services, and bars ex-Saddam security personnel from regaining jobs.
3. Enacting and implementing oil laws that ensure equitable distribution of resources	unsatisfactory	unmet	unsatisfactory	no passage, but revenue being distributed equitably
4. Enacting and implementing laws to form semi-autonomous regions	satisfactory	partially met	satisfactory	Regions law passed October 2006, but main blocs agreed to moratorium on implementation until April 2008.
5. Enacting and implementing: (a) a law to establish a higher electoral commission, (b) provincial elections law; (c) a law to specify authorities of provincial bodies, and (d) set a date for provincial elections	satisfactory on (a) and unsatisfactory on the others	overall unmet; (a) met	satisfactory on (a) and (c).	Draft law stipulating powers of provincial governments had two readings but was sent back in December 2007 to the presidency council for revisions. Several provincial governors pressing for passage.
6. Enacting and implementing legislation addressing amnesty for former insurgents	conditions do not allow a rating	unmet	conditions do not allow a rating	January 1, 2008, cabinet submitted to COR draft law to amnesty 5,000 “non-terrorist” detainees held by Iraq, would not affect 25,000 detainees held by U.S. Draft had first reading in COR on January 21.
7. Enacting and implementing laws on militia disarmament	conditions do not allow rating	unmet	conditions do not allow rating	No progress on disarmament program or related laws
8. Establishing political, media, economic, and services committee to support U.S. Baghdad “surge”	satisfactory	met	met	No change

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Benchmark	July 12 Administration Report	GAO Report	Sept. 14 Administration Report	Subsequent Actions
9. Providing three trained and ready brigades to support U.S. surge	satisfactory	partially met	satisfactory	No change
10. Providing Iraqi commanders with authorities to make decisions, without political intervention, to pursue all extremists, including Sunni insurgents and Shiite militias	unsatisfactory	unmet	Mixed: satisfactory to pursue extremists, but political interference continues	No significant change
11. Ensuring Iraqi Security Forces (ISF) providing even-handed enforcement of law	unsatisfactory	unmet	overall mixed. Satisfactory on Iraqi military, unsatisfactory on police	No significant change.
12. Ensuring that the surge plan in Baghdad will not provide a safe haven for any outlaw, regardless of sectarian affiliation	satisfactory	partially met	satisfactory	No change. Mahdi Army at reduced level of activity due to Sadr six month suspension and reported decline in Iranian weapons shipments. Sadr might not extend suspension.
13. (a) Reducing sectarian violence and (b) eliminating militia control of local security	Overall mixed. Satisfactory on (a) but unsatisfactory on (b)	unmet	same as July 12	Sectarian violence continues to drop, but militias still operating. 70,000 Sunni "Concerned Local Citizens" and 15,000 tribal "Awakening" fighters combatting Al Qaeda, but still distrusted by Maliki government as potential Sunni militia forces. Only 15% of these Sunni fighters have been allowed to join ISF.
14. Establishing Baghdad joint security stations	satisfactory	met	satisfactory	No change
15. Increasing ISF units capable of operating independently	unsatisfactory	unmet	unsatisfactory	Continuing but slow progress training ISF. U.S. officials say s ISF likely unable to secure Iraq internally until 2012; and against external threats not until 2018-2020.
16. Ensuring protection of rights of minority parties in Iraqi parliament	satisfactory	met	satisfactory	No change
17. Allocating and spending \$10 billion in 2007 capital budget for reconstruction projects, on an equitable basis	satisfactory	partially met	satisfactory	About 4.5% of the \$10 billion spent by August 2007, according to Iraqi figures. \$13 billion more in 2008 Iraqi budget now debated.
18. Ensuring that Iraqi authorities are not undermining or making false accusations against ISF members	unsatisfactory	unmet	unsatisfactory	No change